

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



74-1118

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UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

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Docket No. 73 CR 586

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UNITED STATES OF AMERICA,

Appellee,

-against-

HAROLD SANCHEZ,

Defendant-Appellant.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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APPENDIX TO BRIEF

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STANLEY ZINNER  
Attorney for Defendant-Appellant  
191 East 161st Street  
Bronx, New York 10451  
(212) 669-1500



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RACERASE BOND  
SOUTH-WESTERN CO. S. A.  
39% COTTON FIBER

INDEX TO APPENDIX

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## DOCKET ENTRIES

D. C. Form No. 100

CRIMINAL DOCKET

7300 586

NEAHER, J.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For 1. S. PAUL LAZARUS

vs.

HAROLD SANCHEZ

For Defendant: Stanley ZIN  
 507 E. 151st Bx, N.  
 (669-1500)

Rape, robbery and assault etc.

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

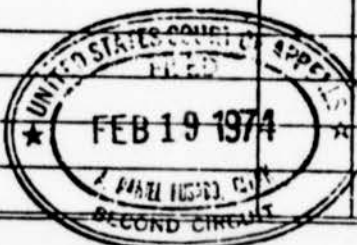
Clerk,

Marshal,

Attorney,

Commissioner's Court,

Witnesses,



PROCEEDINGS

- 6-1-73 Before Judd J - Indictment filed.  
 6/22/73 Before NEAHER, J. - Case called- Deft SANCHEZ and counsel present- Def arraigned and enters a plea of not guilty-Deft's motion to reduce bail Motion denied -Set for trial 7/24/73.  
 6/22/73 Notice of Appearance filed. (SANCHEZ)  
 6-22-73 Notice of Readiness for Trial filed.  
 7/13/73 Notice of Motion filed, ret. 7/24/73 re: suppression of evidence  
 7/30/73 Letter from Stanley Zinner Esq. re: Deft Harold Sanchez, for waiver of his right to a speedy trial to an adjourned date during the month of September (Forwarded to Judge Neaheer)  
 8/7/73 Magistrate's file 73M823 inserted into CR file.  
 9-17-73 Before Neaheer, J - Case called - Hearing ordered and begun - hearing held and concluded - trial contd to 9-18-73.



73 02 586

A-2



INDICTMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

-against-

HAROLD SANCHEZ,

Defendant.  
-----X

Cr. No. 73 CR 586  
(T. 18, U.S.C., §2031, 113,  
2111 and 661)

June 14, 1973

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 28th day of March, 1972, within the Eastern District of New York, the defendant HAROLD SANCHEZ, did, within the special territorial jurisdiction of the United States, rape one Linda Jeanne Wilson. (Title 18, United States Code §2031).

COUNT TWO

On or about the 28th day of March, 1972, within the Eastern District of New York, the defendant HAROLD SANCHEZ, did, within the special territorial jurisdiction of the United States, assault with intent to commit rape, one Linda Jeanne Wilson. (Title 18, United States Code §113).

COUNT THREE

On or about the 28th day of March, 1972, within the Eastern District of New York, the defendant HAROLD SANCHEZ, did, within the special territorial jurisdiction of the United States, by force, violence and intimidation take from the person and presence of Linda Jeanne Wilson one 19 inch Sears and Roebuck color television,

INDICTMENT

one 35 millimeter Cannon Camera, and Four Dollars (\$4.00) in United States currency, all items of value. (Title 18, United States Code, §2111).

COUNT FOUR

On or about the 28th day of March, 1972, within the Eastern District of New York, the defendant HAROLD SANCHEZ, did, within the special territorial jurisdiction of the United States, take and carry away with intent to steal one 19 inch Sears and Roebuck color television, one 38 millimeter Cannon camera and Four Dollars (\$4.00) in United States currency, all of which were the personal property of Linda Jeanne Wilson and Steve Wilson and were of a value in excess of One Hundred Dollars (\$100.00). (Title 18, United States Code §661).

A TRUE BILL.

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UNITED STATES ATTORNEY

are a foot away, am I right?

MISS O'BRIEN: Objection, your Honor.

Q Let me rephrase that.

On March 28, 1972, without your glasses, could you see objects approximately one foot away?

A A large object?

Q Yes.

A Yes.

Q A face, for example?

A Yes.

Q How long would you estimate this sexual assault took?

A Less than five minutes.

Q And were the movements of the man that attacked you steady all throughout?

A I don't know.

Q Well, toward the end of the act, were his movements very rapid?

A I don't know.

Q Are you all right?

A Yes.

Q There came a time when this attacker withdrew, am I right?

A Yes.

2 Q By that I mean he withdrew his penis from  
3 your vagina?

4 A Yes.

5 Q Did he place any cloth next to your vagina?

6 A No.

7 Q Did you see him get up off the bed?

8 A I don't remember.

9 Q Did you see whether he held any cloth or  
10 covering, whether he held his hand over his penis as he got  
11 up?

12 A I don't know.

13 Q Did you see any seminal fluid coming from  
14 his penis?

15 A I didn't even look.

16 Q You are a married woman, am I right?

17 A Pardon me?

18 Q You are a married woman, am I right?

19 A Yes.

20 Q You were married at the time of this incident.  
21 occurred; am I right?

22 A Yes.

23 Q After this man withdrew from you, did you  
24 experience or feel any fluid exiting from your vagina?

25 A yes.

1  
2 And, briefly, if I may explain this --

3 Q Please do.

4 A - everyone will belong to one of the four internation-  
5 al blood groups.

6 Those blood groups are O, A, B and AB.

7 Now, if a person belongs to blood group A, then he  
8 has present in his red blood cells and in his blood supply  
9 the blood group substance A, but does not have present the  
10 blood group substance B, and therefore he is in blood  
11 group A.

12 If a person has the B blood group substance present,  
13 on his red blood cells and not the A blood group substance,  
14 then he belongs to blood group B.

15 If both are present, he belongs to blood group AB.

16 If neither are present, he belongs to blood group O.

17 Now approximately 85 percent of the population of  
18 North America are what are called secreters. And these  
19 people secrete into their other body fluids, such as in the  
20 female, in vaginal lubrication or vaginal fluids, and in  
21 saliva.

22 In the male, it is present in saliva and is also  
23 present in his semen. They secrete A and B blood group  
24 substances, if they are also present in their blood.

25 Therefore, it is possible from a dried saliva stain



1  
2 or a dried semen stain to determine a blood group of  
3 someone that either the saliva stain came from or was mixed  
4 with, the fluid from someone else.

5 Now, for example, if blood and semen were mixed  
6 together, then we frequently can determine the blood group  
7 of the person from which it came.

8 Now, I can --

9 Q Let me ask you this question. When you perform  
10 a blood grouping test, is the test one of elimination, or  
11 can you tell from whom the blood came? In other words, let's  
12 say you get an A blood grouping. Does that eliminate certain  
13 people?

14 A Oh, yes -- In other words, if I can --

15 First off, if I know the blood grouping of a particular  
16 individual, in other words, I know a particular person is  
17 blood group A --

18 Q Yes?

19 A Well, then, if I identify a dried blood stain as being  
20 blood group A, I can just say, it might have come from him.  
21 I cant say it did come from him, particularly, because it  
22 could have come from anyone belonging to blood group A.

23 However, if that dried stain identified belonged to  
24 blood group B, then I could state that that couldn't have  
25 possibly come from the person belonging to blood group A.



1  
2 So this tends to the exclusion.

3 MR. ZINNER: Your Honor, at this time  
4 the defense will offer a stipulation that the  
5 blood group of the defendant, Harold Sanchez,  
6 was conducted last week, and that the blood  
7 grouping was type O positive.

8 MS. O'BRIEN: No objection.

9 BY MR. ZINNER:

10 Q Now, Mr. Kelleher, regarding the semen stains  
11 that were on the bedspread, you conducted tests regarding  
12 the blood grouping on that; is that right?

13 A Yes, I did.

14 Q What did you find, sir?

15 A I determined that the A blood group substance was  
16 present in the semen, that is, in two of the semen stains  
17 found on the bedspread.

18 Q Since it has been determined that Mr. Sanchez  
19 is in blood group O, is it possible that the blood group A  
20 from the semen came from him?

21 A No, it is not possible that the A blood group sub-  
22 stance came from him.

23 CROSS-EXAMINATION

24 BY MS. O'BRIEN:

25 Q Mr. Kelleher, when you conducted this examination

1  
2 of the stain, that is, of the bedspread, were you able to  
3 segregate the male fluids from the female fluids?

4 A No, I was not.

5 Q So when you determined that there was an A  
6 blood grouping substance or some substance was in the  
7 A blood grouping category, were you able to determine  
8 whether that A blood grouping belonged to the female secre-  
9 tions or the male secretions?

10 A Well, for clarification, I, what I am talking about,  
11 the mixture here is that if in a dried stain, there are  
12 frequently present both the dried semen and the dried  
13 vaginal secretions of the female, and in this sense I  
14 couldn't determine whether they came from either the  
15 vaginal secretions or from the semen.

16 Q So if the vaginal area of the woman involved  
17 was of an A blood grouping and if she were a secreter, this  
18 could have very well accounted for the fact that the A  
19 blood grouping was found in the stain on the bedspread?

20 A Yes, that is possible.

21 MS. O'BRIEN: I have no further questions.

22 Oh, I have one further question.

23 Q After you determined that there was a blood  
24 grouping substance in the semen, did you conduct any further  
25 examination to see if there was also any A positive

substance or can that be done?

A In the RH blood group system, which is separate from the ABO system, this fact we have not been able to successfully isolate as secretive stains in dried semen. So I didnt do this examination.

Q So does the mere fact you did identify an A group substance in fact negate the possibility that O blood grouping semen occurred in that stain or existed in that stain?

A It did not eliminate this possibility, no.

MS. O'BRIEN: Thank you.

REDIRECT EXAMINATION

BY MR. ZINNER:

Q Agent Kelleher, you performed several tests regarding the specimens that were sent to you. Am I correct?

A That is correct.

Q And did any of the tests performed on any of the substances which were sent which you testified to be a few months ago, did you find the O positive blood substance in any of those findings?

A No.

If I can explain this --

Q Certainly.

A I was testing to see if either the A or B blood group

1  
2 readily disproved. Under the circumstances,  
3 if there is any independent -- if one can call  
4 it that -- evidence that may help a jury decide  
5 whether it can justifiably beyond a reasonable  
6 doubt conclude that it was this defendant and  
7 not someone else who did the act, because really  
8 the core issue in this case as I see it is  
9 identification.

10 If there is any evidence, it may have  
11 a bearing on that subject. I think the Court  
12 should not strike out, but on the other hand,  
13 I don't believe the Court should conclude from  
14 it as a matter of law that it exonerates this  
15 defendant, because that's what you are asking  
16 me to do.

17 MR. ZINNER: Yes.

18 THE COURT: So I'm going to deny that  
19 motion and permit the jury to consider that  
20 evidence along with other evidence in the case  
21 for whatever its worth.

22 MR. ZINNER: I respectfully except to  
23 your Honor's ruling.

24 THE COURT: What else do you have?

25 MR. ZINNER: That's all I have. Naturally

5

## Charge of the Court

-- applies to Government and defense witnesses --  
if you find that anyone has willfully testified  
falsely to any material fact, you may reject all  
his testimony, or accept that part or portion  
which commends itself to your belief, for which  
you may corroborate by other evidence in the case.

Now, the defendant, in taking the stand,  
denied that he was present at the time or place  
in question. He gave other evidence relating to  
his past connection with this particular apart-  
ment dwelling, having -- I believe he said, been  
a resident there himself. He gave testimony to  
the effect that he visited this particular place  
within a few weeks certainly, and several times  
after that for treatment. Aside from that, a  
Government witness was produced here, Mr. Kelleher,  
the serologist from the Federal Bureau of Investi-  
gation, who gave certain evidence based on -- I  
believe he called them seminal stains, or body  
fluid stains found on a certain bed cover which  
had been removed from the bed where the act de-  
scribed by Mrs. Wilson took place.

All this is grist for you to decide to  
weigh and evaluate and form, as I say, the ultimate



7

## Charge of the Court

recollection, viewed in the light of all the other testimony, and the attendant circumstances in the case.

How did the witness impress you? Did his version, or her version, appear straightforward and candid, or did he try to hide some of the facts, he or she?

Is there a motive to testify falsely?

In other words, what you try to do, to use the vernacular, is to size a person up, just as you would do in any important matter where you were undertaking to determine whether or not a person is truthful, candid, and straightforward.

Now, as I said before, you have heard here, in addition to Mrs. Wilson and the defendant, the fingerprint expert, the serologist, people who, of course, were not present at the time in question. However, they are men of special training and knowledge, and by virtue of that -- of the law, they are permitted to tell you, the jury, what their conclusion and opinions are with respect to certain facts.

And as I said before, it is entirely within your province to determine what weight shall be



REQUESTS TO CHARGE

1. If you find from the evidence that there existed a seminal stain which was not commingled or mixed with Linda Wilson's body fluid, and which was tested for blood group, you must find the defendant not guilty.

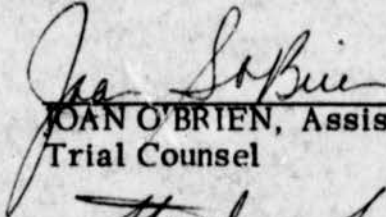
2. If you find from the evidence that a blood grouping test was performed on a seminal stain produced by the rapist, which stain was unaffected by the complainant's body fluid, you must find the defendant not guilty.


3. If you find from the evidence that a blood grouping test was performed on a pure seminal stain produced by the rapist, you must find the defendant not guilty.

Respectfully submitted,

STANLEY S. ZINNER  
Counsel for defendant

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that the above Requests to Charge were submitted to the Trial Court during the trial of the instant indictment.

  
JOAN O'BRIEN, Assistant U. S. Attorney  
Trial Counsel

  
STANLEY S. ZINNER, Attorney for  
Appellant  
Trial Counsel

# JUDGMENT AND COMMITMENT

JUDGMENT AND COMMITMENT (Rev. 2-68)

Cr. Form No. 25

## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

United States of America

v.

HAROLD SANCHEZ

No. 73CR-586

DEC 14 1973

FILED  
P.

FILED

On this 14th day of December, 1973 came the attorney for the government and the defendant appeared in person and counsel

It is ADJUDGED that the defendant ~~was convicted~~ having been found guilty by a jury verdict has been convicted of the offense of violating Title 18 U.S. Code Sections 2031, 113, 2111 and 661 in that on or about March 28, 1972, within the Eastern District of New York, the defendant did within the special territorial jurisdiction of the United States assault and rape one Linda Jeanne Wilson, and by force, violence and intimidation take from the person and presence of Linda Jeanne Wilson with intent to steal one 19 inch Sears and Roebuck color television, one 35 millimeter Cannon camera and \$4.00 in U.S. currency, all of which were the personal property of Linda Jeanne Wilson and Steve Wilson and were of a value in excess of One Hundred Dollars

as charged in counts 1, 2, 3 and 4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is ADJUDGED that the defendant is guilty as charged and convicted.

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

It is ADJUDGED that the defendant is sentenced pursuant to Section 4208(b) Title 18, U.S. Code, to an indeterminate period for study and observation.

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to

*Edward R. Neaker*  
United States District Judge.

Clerk.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

73 CR 586

- against -

NOTICE OF APPEAL

HAROLD SANCHEZ,

Defendant.

Notice is hereby given that HAROLD SANCHEZ, defendant above named hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment of conviction and sentence imposed on December 14th, 1973, for the crime of rape, assault and related counts, entered in this action on the 14th day of December, 1973, and from each and every part of said judgment as well as the whole thereof.

Dated: Bronx, New York  
December 14, 1973

Yours, etc.

ROTHBLATT, ROTHBLATT, SEIJAS  
& PFSKIN

Attorneys for Defendant  
HAROLD SANCHEZ  
Office and Post Office Address  
507 East 161st Street  
Bronx, New York 10451

TO: EDWARD J. BOYD, V  
Acting United States Attorney  
for the Eastern District  
225 Cadman Plaza East  
Brooklyn, New York

Copy received

3-4-74 at

11 45 am.

J. B. R.

